ALADIN v. PUBLIC PROSECUTOR

[F.C. (Wylie C.J. (Borneo), Tan Ah Tah F.J. and Gill J.) February 5, 1964]

[Jesselton — Federal Court Criminal Appeal No. 24 of 1963]

Penal Code, ss. 84, 85(2)(b) and 299 — Murder — Defence of temporary insanity due to intoxication — Intention — Challenge of findings on questions of fact.

The appellant after a wedding feast at which much alcohol was consumed had a quarrel with one O, but the appellant's brother and one T separated the two and took the appellant towards his house. However before reaching the house the appellant broke away from them and ran into the house. They pursued, but the appellant reappeared from the back door, running with a "parang". He ran back to the celebrations and indiscriminately slashed seven people including the deceased. On this evidence the assessors came to the conclusion that the appellant did not cause the death of the deceased, but the trial judge disagreed with them, and held that the accused did cause the death of the deceased within the meaning of section 299 of the Penal Code and convicted him of murder. It was contended on appeal that: (1) the judge should not have found that the appellant caused the death of the deceased; (2) the judge should have found that appellant, when he struck the deceased, was temporarily insane due to intoxication and (3) alternatively, the judge should have found that the accused could not, due to intoxication, have formed the necessary intention to constitute the offence of murder.

Held: (1) in the circumstances of this case it was open to the judge to find that it was established beyond reasonable doubt that the wounding was one of the causes of the deceased's death and that it accelerated the deceased's death and on this the judge was entitled to find that the appellant caused the death of the deceased within the meaning of section 299 of the Penal Code;

(2) as all the evidence suggested that the accused knew what he was doing and that that was wrong, the court could not hold that the judge's finding on the second question was unreasonable;

(3) on the evidence the court should not interfere with the finding of the judge against the appellant on the question of intention.

FEDERAL COURT.

Shelly Yap Yeok Siew for the appellant.

Charles Ho (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wylie C.J. (Borneo): The appellant was convicted of the murder of an old man named Majaim bin Musajam and sentenced to death.

There is no dispute about the facts. On 8th June last year, there was a wedding feast that continued all day at which much local drink was consumed. Towards evening, the evidence suggested, there was a quarrel between appellant and one Odoh. Appellant's brother and the Orang Tua separated the two and took appellant towards his house. They had little difficulty and he apparently understood them and obeyed them. Before reaching the house, appellant broke away from them and ran into the house. They ran up the steps, but appellant reappeared from the back door, running with a parang. He ran back to the celebrations and slashed seven people — apparently indiscriminately. He did not slash Odoh who hid himself in the sago groves. The party broke up in confusion. Majaim bin Musajam was one of the seven slashed and he died the next day at the hospital after an operation.

The three assessors came to the conclusion that the appellant did not cause the death of deceased and, as this was their answer to the first question put to them, their answer to the other questions was not obtained.

The trial judge did not agree with this answer. He came to the conclusion that accused did cause the death of deceased within the meaning of that expression in section 299 of the Penal Code, found against him on the other matters in issue and, in consequence, convicted him of murder.

Appellant's grounds of appeal, taken together, really raise three questions, namely —

(1) that the judge should not have found that appellant caused the death of the deceased;

(2) that the judge should have found that appellant, when he struck deceased, was temporarily insane due to intoxication;

and (3) alternatively, that the judge should have found that the accused could not, due to intoxication, have formed the necessary intention to constitute the offence of murder.

These questions challenge the findings on questions of fact (there being no dispute as to the law applicable) and the appellant must therefore satisfy the Federal Court that these decisions on questions of fact are unreasonable or cannot be supported having regard to the evidence.

The first question — whether the judge should have found that appellant caused the death of deceased — concerns only the medical evidence. The doctor's evidence is to the effect that deceased was an old man and that several causes contributed to his death. One, he thought, would be the state of the arteries of the heart due to old age causing coronary occlusion. The deceased, he thought, could have dropped dead at any time, but he considered the wound and the operation, with loss of blood from these two causes, also contributed to his death, and that the failure of the heart was also due to the stress put upon it consequent on the wound and the operation. He considered that, in consequence of the wound, the operation was absolutely necessary and that there was no doubt whatsoever that the wounding accelerated the victim's death.

In this state of the evidence, it was clearly open to the trial judge to find that it was established beyond reasonable doubt that the wounding was one of the causes of death and that it accelerated death. On such findings the judge

was entitled to find that the appellant caused the death of the deceased within the meaning of section 299 of the Penal Code. The first explanation to that section is particularly appropriate to the medical evidence in this case.

The second question raised is that the judge should have found the appellant acted while temporarily insane, due to intoxication. As there was not the slightest evidence of unsoundness of mind apart from intoxication, the appellant could not rely on section 84 of the Penal Code and the appellant relies on the exception created by section 85(2)(b). That section reads as follows:

"(2) Intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and —

. . . . . .

(b) the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission."

This section provides for a defence of temporary insanity due to intoxication, and no objection has been taken to the trial judge applying the same standard of proof as for the usual defence of insanity, namely, that the onus is on the appellant to establish the defence on the balance of probabilities.

I have referred to the evidence to the effect that appellant was able to understand and obey those who escorted him to his house, that he dashed away from them and, after obtaining a parang, appears to have deliberately avoided his escort by dashing out through the back door of his house. There are several further passages in the evidence from victims and others who reasoned with appellant. To one who asked appellant why he was attacking him, appellant replied: "I don't care. I am going to kill everybody. I am a Communist". Appellant chased another man into a house and, from the outside, shouted: "Where is that man just now. Let me slash him to pieces." He went round to the kitchen of the house and called out: "You people come out. Do not bring sticks with you. I am going to slash you to pieces."

There is also evidence that appellant, who was a special policeman, changed into his police uniform after the incident and may have been pretending to be asleep when the police found him.

None of this evidence is disputed. Therefore, while it is clear that accused was behaving in an abnormal manner, the evidence bearing more directly on the question whether the appellant knew that he was doing wrong or whether he was doing (that is, one of the two matters which the onus is on the appellant to establish to bring himself within section 85(2)(b)) is really against the appellant. For he talked about what he intended to do, and he appears to have run away from his escort and to have changed his clothes and may have pretended to be asleep. All of this evidence suggests that he knew what he was doing and knew that this was wrong.

It follows that this court cannot hold that the judge's finding on the second question was unreasonable. It is scarcely possible, in the state of the evidence, to decide, even on a balance of probabilities, in favour of the appellant on these questions.

On the third question, whether the appellant was so drunk that he could not form the intention necessary to constitute the offence of murder, the evidence referred to on the last question is also relevant, especially the actual words he used, to show that he did have a conscious intention. Indeed, the evidence of all those at the scene, except the appellant's own brother, is to the effect that, while accused was drunk, he was not in a highly advanced stage of drunkenness. Much of this evidence must be suspect, because all of the witnesses, except one, admitted they had also been drinking. However, one said that he was not drinking that day because he was the cook. Appellant slashed him and he described appellant as "slightly drunk".

It is clear that, on this evidence, this court will not interfere with the finding of the judge against the appellant on this question of intention.

It follows that all the grounds raised on behalf of the appellant must fail and this appeal must be dismissed and the conviction and sentence confirmed.

Appeal dismissed.

LOO SEONG THYE v. GOH TEIK YAH

[F.C. (Thomson L.P., Wylie C.J. (Borneo) & Tan Ah Tah F.J.) June 1, 1964]

[Penang — Federal Court Civil Appeal No. 24 of 1963]

Landlord and Tenant — Recovery of possession for arrears of rent — Rent paid in excess — Whether excess may be set off against arrears — Relief from forfeiture — Control of Rent Ordinance, 1956, s. 12(1)(e).

Control of Rent Ordinance, 1956, s. 4(1) — Whether payment of annual assessment for rates is a payment within this provision.

These proceedings were commenced by the respondent, the tenant of the premises in question, for $3,600 excess rent paid to the appellant and $2,469.20 for assessment paid on behalf of the appellant from 1948 to 1960 under an agreement made in 1942. The appellant counter-claimed for $1,275 as arrears of rent and sought an order for possession under section 12(1)(a) of the Control of Rent Ordinance claiming that the respondent was in arrears with payment of the rent and that the